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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA.No.3783 of 2013

1.D.Kaliammal

2.A.Dasan

3.D.Shalini

... Appellants

Vs.

1.K.K.Sadhasivam

2.R.P.M.Bus Service

3.The Branch Manager,

United India Insurance Company Ltd.,

SRS Towers, No.595, Mettur Main Road,

Bhavani-638 301, Erode District

(R1 Driver remained ex-parte,

Hence notice may be dispensed with)

...Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and award of the Motor Accident Claims Tribunal (Addl. District Court-cum-Fast Track Court No. 1) Erode in M.C.O.P No. 10 of 2011 dated 14.10.2011.

For Appellants : Mr.S.Kaithamalaikumaran

For R1 : Exparte

For R3 : T.Ravichandran

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and award of the Motor Accident Claims Tribunal (Addl. District Court-cum-Fast Track Court No. 1) Erode in M.C.O.P No. 10 of 2011 dated 14.10.2011.

Brief facts leading to the claim application are as follows;

2. On 14.04.2010 at about 9-15 P.M, when Subramani (deceased) was riding Yamaha Motor cycle bearing registration No.TN.27 R1881, along, Erode to Bhavani Main road, with slow speed and obeying all the traffic rules, with his friend one Raja and the motor cycle nearing pumbukar nagar housing unit, from south to north, at that time a private RPM bus bearing registration no.TN.33 R4138 driven by its driver in a rash and negligent manner from opposite side i.e. North to south direction without blowing horn, suddenly dashed against the motor cycle of the deceased subramanian. As a result, the



deceased sustained greivous and fatal injuries. He was immediately taken to the Coimbatore Government Hospital. In spite of the treatment given to him, he died on 15.04.2010 at about 3.45 A.M. The petitioners who are parents and sisters of the deceased have filed a petition before the tribunal, claiming compensation of Rs.20,00,000/-.

3. The Third respondent/Insurance Company, in the counter statement, has denied the involvement of the bus in the accident as stated by the claimants and further stated that there is no mention with regard to the age, occupation, monthly income of the deceased Subramanian. The insurance company also denied the statement of the claimants thus the deceased was riding his motor cycle with slow speed and obeying all the traffic rules and further stated that there is no traffic rule to obey any rule when a motor cycle is cruising at a normal speed. The petitioners are withholding the full facts leading to the accident with ulterior motives, and also denied the claim of Rs.20,00,000/- as there is no legal basis except as a speculative venture.

4. The Tribunal after analyzing the evidence and documents, placed before the same and also considering the fact that the deceased was a final year B.Com. Student and he was 22 years at the time of accident, has awarded a sum of Rs.2,10,000/- (Rupees two lakhs and ten thousand only) as compensation against the claim of Rs. 20,00,000/- (Rupees twenty lakhs only) under the following heads :

Heads	Amount awarded by the Tribunal
Loss of income	Rs. 1,70,000/- (10,000x17=1,70,000)
Love and affection	Rs. 30,000/-
Transportation	Rs. 5,000/-
Funeral	Rs. 5,000/-
TOTAL COMPENSATION	2,10,000/-

Aggrieved against the said judgment, the claimants have preferred this appeal for enhancement.

5. It is the grievance of the appellants in the grounds of appeal that the Tribunal has not calculated the loss of income by applying proper multiplier. The further grievance raised by the Appellants is that, the future prospects for the deceased was not calculated and the sum awarded under the head "love and affection" is on the meagre side. It is also the grievance that the annual contribution taken by the tribunal is very less



inspite of salary certificate produced. It is stated that even an unskilled labour gets a sum of Rs.250/- per day as salary, hence the tribunal ought to have fixed a decent monthly income.

6. On a perusal of the award passed by the tribunal, it is seen that the deceased was an employee under the private concern and based on the pay slip, his income was taken by the Tribunal at Rs.3,000/- and for the personal expenses, one third amount was deducted by the Tribunal and hence the deduction of one third has to be properly considered . Further, the arguments advanced by the Appellants is that the sum calculated as loss of income by applying the multiplier is not proper. The tribunal granting a lesser sum of Rs.5000/- each towards the transport expenses and the funeral expenses are also needs to be properly modified.

7. Heard both sides and perused the documents available on record.

8. It is argued by the appellants that the sum awarded by the tribunal is very much on the lower side when the age and occupation and the earning capacity of the deceased was very much proved before the tribunal. The tribunal has not appreciated the document and evidence with regard to the part time employment of the deceased. The tribunal has not considered the fact that an even unskilled labourer can earn Rs. 250/- per day, whereas the deceased who is the B.com final year student and also doing a part time job and earning Rs.4,000/-, the sum determined by the tribunal without considering Exhibit P16 salary certificate issued by the employer of the deceased is not justifiable one. It is very much contended by the appellant that the notional income determined by the tribunal at Rs.15,000/- (Rupees fifteen thousand only) is reasonable one and also deducting $1/3^{\text{rd}}$ towards personal expenses of the deceased the sum arrived at Rs.10,000/- for the deceased, who was bright candidate of final year student and also earning Rs.4000/- by doing a part time job the sum by the tribunal is not on the reasonable side.

9. On a perusal of the award, it is seen that Exhibit P16 salary certificate of the deceased was filed before the tribunal. Though the employer of the deceased was examined, no relevant documents were placed before the tribunal in respect of the disbursement of salary and the appointment of the deceased on a part time worker in the said concern. However, in the order it is seen that the tribunal has fixed the notional income at Rs. 15,000/- which this Court finds it not reasonable in view of the argument advanced by the appellant that even a



unskilled labour would definitely earn a sum Rs.250/- per day. This court observes that the deceased being a bright student and also doing part time job, the income of the deceased has to be properly considered. There is no adverse or contra argument made by the other side and there is every possibility that even an unskilled labourer of the age that is 21 years definitely a person would earn a reasonable amount. Hence, considering the age of the deceased, who is the only son to his family, definitely it is his responsibility to take care of his parents by equipping to the highest position and giving his parents comfortable life. The educational qualification of the deceased was also proved before the tribunal by way of the documents.

10. In view of the above this Court finds it reasonable, if the monthly income is fixed at Rs.3,000/- and by applying proper multiplier 18 according to the age of the deceased and deducting 1/3 towards personal expenses, the sum for Loss of income is calculated at Rs. 4,32,000/-.

11. That apart, the tribunal has awarded only a sum of Rs.5,000/- towards expenses, which this Court finds not reasonable. Hence, taking note of the cost of living, the sum of Rs.5000/- awarded under the heads funeral expenses is enhanced to Rs.15,000/-. However, the sum awarded under the other heads viz., love and affection and transport expenses are reasonable and proper, the same are confirmed.

Accordingly, the sum awarded by the tribunal is modified by this Court as follows:

Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Loss of income	Rs. 1,70,000/-	Rs.4,32,000/- (3000x12=36000) (36,000x1/3=12,000) (36000-12000=24000) (24000x18=4,32,000)
Love and affection	Rs. 30,000/-	Rs. 30,000/-
Transportation	Rs. 5,000/-	Rs. 5,000/-
Funeral Expenses	Rs. 5,000/-	Rs. 15,000/-
TOTAL	Rs. 2,10,000/-	Rs.4,82,000/-

12. In view of the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs.



13. Accordingly, the third respondent/Insurance Company is directed to deposit the entire award amount as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount to the claimant's bank account thro' RTGS within one week thereon as per the apportionment ordered by the tribunal. The rate of interest shall carry the same as awarded by the tribunal. The claimants are directed to pay the additional court fee for the enhanced award amount.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District Court-cum-Fast Track Court No. 1
Motor Accident Claims Tribunal,
Erode.

Copy To: The Section Officer, V.R.Section,
High Court of Madras

+1 cc to M/s.T.Ravichandran, Advocate Sr.No. 7146
+1 cc to M/s.S.Kaithamalai Kumaran, Advocate Sr.No.7465

AKM/06.11.19/5P- 5C /

C.M.A.No.3783 of 2013